

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AKEEM MUSA,

Plaintiff,

v.

KABUL, INC. and HAMED ZAFARI,

Defendants.

ORDER

15-cv-804-jdp

Plaintiff Akeem Musa seeks unpaid wages from defendants. Defendant Kabul, Inc. is a corporation operating a restaurant in Madison, Wisconsin. Defendant Hamed Zafari is the owner of Kabul. Kabul is unrepresented. Zafari is pro se.¹

Musa moves under Federal Rule of Civil Procedure 41(a)(2) to dismiss Zafari from the action without prejudice. Dkt. 20. Plaintiff's strategy is apparent: drop Zafari and the corporation Kabul is a sitting duck for default judgment.

Rule 41(a)(2) allows a plaintiff to dismiss "an action" on "terms that the court considers proper." In the Seventh Circuit, Rule 41(a) is not the proper procedural vehicle to drop a party from an action. As the Seventh Circuit has explained, "Rule 41(a) does not speak of dismissing one claim in a suit; it speaks of dismissing an action—which is to say, the whole case." *Taylor v. Brown*, 787 F.3d 851, 857 (7th Cir. 2015). Because Musa seeks dismissal of one party and not the entire action, I will deny Musa's motion. The proper procedural vehicle here is Rule 15(a), which would allow Musa to amend his complaint and

¹ The court has advised Kabul numerous times since January 2016 that Kabul must retain counsel to appear in this case because Kabul is a corporation, and that failure to retain counsel can result in a default judgment against Kabul. Dkt. 6; Dkt. 8; Dkt. 16; Dkt. 18. Kabul is still unrepresented. The court held a pretrial conference on June 7, 2016, but neither defendant attended the conference.

drop a party. *Id.* at 858. Musa may file a proposed amended complaint and concurrently move for leave to amend his complaint.

ORDER

IT IS ORDERED that plaintiff Akeem Musa's Rule 41(a)(2) motion, Dkt. 20, is DENIED.

Entered September 9, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge